Legal Action of Wisconsin, Inc. and United Legal Workers, Petitioner. Case 30-RC-3911

May 27, 1982

DECISION ON REVIEW

By Members Fanning, Jenkins, and Zimmerman

On June 19, 1981, the Regional Director for Region 30 issued a Decision and Direction of Election in the above-captioned proceeding in which he found appropriate an employerwide unit of attornevs, paraprofessionals, and office clerical employees at the Employer's six offices located in southeastern Wisconsin,1 rather than the requested single-location unit at the Employer's Dane County office in Madison, Wisconsin. He therefore directed an election in the broader unit, conditioned upon the Petitioner's submission of an adequate showing of interest therein. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's decision on the ground, inter alia, that in finding the requested unit inappropriate the Regional Director departed from established Board precedent.

By telegraphic order dated July 22, 1981, the National Labor Relations Board granted the Petitioner's request for review. Thereafter, both the Petitioner and the Employer filed briefs on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer is a nonprofit Wisconsin corporation engaged in providing free civil legal services to low-income persons through two offices located in Milwaukee and one each in Waukesha, Madison, Kenosha, and Janesville, Wisconsin. The Petitioner seeks to represent a unit of approximately 17 attorneys, paraprofessionals, and office clericals at the Employer's Dane County office located in Madison. The Employer contends that, because it is administratively centralized and because the staff at-

torneys in the Dane County office interact with attorneys from all other locations as part of a priority committee system, only a programwide unit consisting of approximately 44 individuals at all 6 offices is appropriate. The Employer also contends that, if the Dane County office is an appropriate unit, the three attorneys assigned to that office but who work on statewide projects should not be included in the unit.

Since 1977, the Employer has provided direct legal services in civil matters to low-income residents in an 11-county area in southeastern Wisconsin. The Employer also operates two statewide programs—a migrant workers' project and a legislative and administrative reform project. The operation is funded primarily by the Legal Services Corporation, a nonprofit corporation created by Congress in 1974, and is governed by a 40-member board of directors composed of attorneys, the Employer's clients, and representatives of the lowincome community. The board is responsible for overall management of the program and has ultimate authority, with some input from individual offices, over the basic field budget from which funds for each office are allocated, using a formula based on the number of poverty-level residents in the geographic area served by the particular office. Funds for the statewide projects are separate and come directly from the Legal Services Corporation.

The board of directors has mandated that each local office must provide services in the areas of housing, welfare, and emergency family law, as well as in nine "priority" areas—consumer and utility, employment, family, juvenile, mental health, housing, welfare, migrant and immigration, and education and school—based on the needs of the area residents. A staff manual, which codifies the regulations and guidelines of the Legal Services Corporation, includes categories such as "Personnel Practices" and "Attorney Performances" and is updated by the board twice a year for distribution to all employees. Overall responsibility for the Employer's management functions and personnel administration, including hiring and firing, is vested in the Employer's executive director, who is directly responsible to the board of directors and to the central administrative staff, the latter of which is located in the Milwaukee southside office.

Each of the Employer's offices has a managing attorney and a support staff of attorneys, paralegals, and clericals. Each office also has a program committee consisting of local attorneys, clients, and representatives of local groups which determines in which of the nine predetermined priority areas services will be provided. The Employer has also

¹ The Regional Director, however, excluded from the unit the paraprofessionals and clerical employees at the Employer's two Milwaukee offices as they have been represented since 1976 by District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and are presently covered by a collective-bargaining agreement effective March 31, 1980, until March 31, 1983. At the time AFSCME sought representation rights, the Employer's operation was known as Milwaukee Legal Services, Inc., and consisted of only two Milwaukee offices. Although AFSCME appeared at the hearing, it declined to intervene and took no position on the issues involved.

established five priority committees consisting of staff attorneys from various offices who review and make recommendations to the executive director with respect to priority area concerns, particularly group representation, test case litigation, etc. Each staff attorney must serve on at least one, but no more than two, of these committees. Priority committees meet once a month or less; some committees meet on a regular basis. Each priority committee is coordinated by an attorney who has had substantial experience in the particular priority area addressed by his/her committee. Coordinators are directly responsible to the executive director for priority committee work. They work directly with the managing attorney of the office where the committee member-staff attorney is assigned. Initially the priority system was established to train new attorneys; but, now that the attorneys are essentially trained, less intensive contact is required. The coordinator for consumer and public utilities, who is located at the southside Milwaukee office, testified that his contacts with the Dane County office have been mostly by phone and that in the past year and a half he has supervised only one case out of the Dane County office.

The managing attorney of the Dane County office evaluates employees, makes recommendations to the executive director, resolves first-step grievances, and is the immediate supervisor of the employees located there. The Dane County program committee, in addition to determining in which priority areas the Dane County office shall provide services, meets regularly with the managing attorney, has the authority to review the budget, and would consult with the executive director were a new managing attorney to be hired. The program committee, in conjunction with the local staff, also handles the hiring of paralegals.

The Dane County office is located 90 miles from the central office headquarters in Milwaukee and is approximately 40 miles from the nearest other office in Janesville, Wisconsin. According to the Employer's executive director, there have been no permanent or temporary transfers involving unit employees. However, the Dane County welfare and housing attorneys have, on occasion, worked with Milwaukee welfare and housing attorneys when the Dane County attorneys were more experienced and could provide assistance. In addition, the Dane County paralegal who provides representation in immigration cases has worked with the director of the migrant workers' project, located in Milwaukee, as the director has special expertise in the area of immigration law.

Based on the foregoing, the Regional Director found that, despite the fact that the Dane County

office exhibits a good deal of local autonomy in its daily operations, the presumptive appropriateness of a single-location unit had been rebutted by virtue of the high degree of administrative centralization of the Employer's operation and the unifying nature of the priority committee system. We disagree. Although the Employer's priority committee system involves attorneys from all of the Employer's offices, it is loosely structured. There is little, if any, direct supervision between coordinator and staff attorney. Instead, coordinators work directly with the managing attorney, and staff attorneys look to their managing attorney for supervision. Therefore, based on the substantial geographic distance between the six offices, the autonomy in day-to-day matters exercised by the Dane County office, the absence of interchange or transfer of employees between offices, the minimal contact between Dane County employees and employees of other offices, and the fact that the local program committee establishes priority work for the Dane County office, the presumptive appropriateness of the single-location unit has not been rebutted. Accordingly, we find that a unit limited to the petitioned-for employees constitutes an appropriate unit for collective-bargaining purposes.²

Having found that the Dane County office constitutes an appropriate unit, we now turn to the unit placement issue. There are three attorneys who work out of the Dane County office but, unlike other unit attorneys, are attached to the statewide programs operated by the Employer. The Petitioner contends that these attorneys share a sufficient community of interest with other Dane County office employees to warrant their inclusion in the unit. The Employer disagrees and would exclude these individuals.³

Two attorneys are assigned to the legislative and administrative reform project (hereinafter LARP). They work out of the Dane County office because it is located in the state capital, Madison, where the state legislature sits. They share offices and staff with the other Dane County attorneys and work with the managing attorney there with respect to procedural matters and administrative needs. Although the Employer's executive director tes ified that these attorneys are directly responsible to her with regard to substantive matters, she further stated she could not recall the last time she had met with the LARP attorneys for the purpose of

² See, generally, Legal Services for the Elderly Poor, 236 NLFB 485 (1978). Ohio State Legal Services Association, 239 NLRB 594 (1978) relied on by the Regional Director, is inapposite as the union there sought an employerwide unit.

³ Inasmuch as the Regional Director concluded that only an employerwide unit was appropriate, he did not reach this issue.

supervision. One LARP attorney stated that the executive director had never met with him for supervision purposes and that he confers with the other, more experienced LARP attorney on substantive questions. These attorneys have frequent contact with unit employees and perform regular office intake during vacations or other periods when the office is short-staffed. One of the LARP attorneys attends staff meetings on a regular basis and both are subject to the same terms and conditions of employment as other unit attorneys.

The third attorney is attached to the migrant workers project (hereinafter MWP) but works out of the Dane County office. Like the LARP attorneys, she shares office space and staff with unit employees. However, she is supervised by the MWP director, who is located at the Employer's headquarters in Milwaukee, and speaks with him by phone on a average of two to three times per week. During the past year, she has visited the Milwaukee office approximately 10 times. The Dane County managing attorney has, on occasion, reviewed her drafts but makes no recommendations with respect to her employment. The MWP attorney testified that she discusses her cases with other attorneys in the Dane County office since many of their cases involve the same substantive areas. She also attends office staff meetings and is subject to the same terms and conditions of employment as other unit attorneys.

Both the MWP director and the program attorney were assigned to the Milwaukee headquarters office when the program was first instituted by the Employer; however, since 1978, upon the request of a newly hired MWP attorney who, for personal reasons, preferred to work out of Madison, the MWP attorney position has been attached to the Dane County office. Although the current MWP attorney, who has been employed by the Employer for approximately I year, was given the choice of working in the Milwaukee headquarters or in the Dane County office, and chose—also for personal reasons—to work in the latter, the Employer's executive director testified that there are practical reasons for placing the MWP attorney in the Dane County office. From 1978 until 1980, the MWP attorney was supervised not only by the MWP director but also by the Employer's associate executive director, who was at that time located in the Dane County office and who supervised the other Dane County office attorneys as well.

Based on the foregoing, particularly the fact that these attorneys have frequent and substantial contact with unit employees and are subject to the same terms and conditions of employment as other Dane County office attorneys; that the LARP attorneys receive little, if any, direct supervision from the individual who is purportedly their supervisor; and that both the LARP attorneys and MWP attorneys receive some direction from the Dane County managing attorney, we find that the LARP and MWP attorneys share a sufficient community of interest with unit attorneys to justify their inclusion in the unit found appropriate. We shall, therefore, include them in the Dane County unit.

Accordingly, we find, contrary to the Regional Director, that the following employees constitute appropriate voting groups for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Voting Group A:

All regular full-time and regular part-time employees including paraprofessionals and office clerical employees employed by the Employer at its Dane County office located in Madison, Wisconsin; excluding all managerial employees, attorneys, guards and supervisors as defined in the Act.

Voting Group B:

All regular full-time and regular part-time attorneys employed by the Employer at its Dane County office located in Madison, Wisconsin; excluding office clerical and paraprofessional employees, all managerial employees, guards and supervisors as defined in the Act.

We shall remand this case to the Regional Director for Region 30 for the purpose of conducting an election⁴ pursuant to his Decision and Direction of Election in the appropriate voting groups, as described above, except that the period fordetermining eligibility shall be the payroll period ending immediately preceding the date of this Decision on Review.⁵

⁴ The Regional Director, for reasons not relevant to the instant proceeding, chose not to conduct the election pending the Board's resolution of the issues raised by the Petitioner.

⁵ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsion Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 30 within 7 days of the date of this Decision on Review. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.